IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 70 of 1995

Date of Decision: 24.9.2007

The Commissioner of Income-tax, Rohtak

....Applicant

Versus

The Gurgaon Central Co-operative Bank Ltd., Civil Lines, Gurgaon

...Respondent.

CORAM:- HON'BLE MR. JUSTICE M.M. KUMAR.

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. Yogesh Putney, Advocate for the revenue.

AJAY KUMAR MITTAL, J.

In this reference under Section 256 (1) of the Income Tax Act, 1961 (for short "the Act"), the revenue has claimed that the following question of law arises out of the order passed by the Income Tax Appellate Tribunal, Delhi Bench "A" Delhi (for brevity "the Tribunal") in ITA No. 2553/Del/1987 on 16.9.1993 for the assessment year 1983-84:-

> "Whether, on the facts and in the circumstances of the case and in accordance with the provisions of law, the Tribunal was right in holding that the sum of Rs.3,16,502/- received by the assessee from the apex

bank "for strengthening bad and doubtful debts fund" was related to the banking activities of the assessee and hence not taxable within the meaning of section 80P(2)(a)(i) of the Income Tax Act, 1961?"

The facts as narrated in the statement of the case are that the assessee is a Central Cooperative Bank and under the provisions of Section 80P (2)(a)(i) of the Act, the income of a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members is to be deducted from the gross total income of the cooperative society. The Income-tax Officer during the course of assessment proceedings made an addition of Rs.12,862/- which had been credited under the head "statutory reserve." According to him, the said amount pertained to the non-banking activities of the assessee and as such made the said addition. The assessee filed an appeal against the said addition and the CIT (A) vide order dated 28.1.1987 upheld the addition made by the Income-tax Officer by observing that the amount in question did not relate to the banking business of the assessee as there was no liability during the year under consideration on account of "bad and doubtful debts" and the same was taxable. Feeling dissatisfied with the orders of the ITO and the CIT (A), the assessee filed second appeal before the Tribunal and the Tribunal vide order dated 16.9.1993 ordered the deletion of the addition made by the Income-tax Officer.

The point for determination in this reference at the instance of the revenue is whether the amount which had been received by the assessee on the basis of allocation made by the Haryana State

Cooperative Bank Ltd. and credited to the reserve for "bad and doubtful debts" was allowable deduction in accordance with the provisions of Section 80P (2)(a)(i) of the Act.

Before proceeding further, it would be profitable to reproduce the relevant portion of Section 80P of the Act as it existed during the assessment year under reference which reads thus:-

> **"80P.** (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.
>
> (2) The sums referred to in sub-section (1) shall be the following, namely:-
>
> (a) in the case of a co-operative society engaged in-
>
> (i) carrying on the business of banking or providing credit facilities to its members, or.....
>
> (ii) to (vii) XX XX XX
>
> the whole of the amount of profits and gains of business attributable to any one or more of such activities.
>
> XX XX XX XX
>
> XX XX XX XX"

As per the aforesaid provisions, a Cooperative Society which carries on banking business or provides credit facilities to its members gets deduction in respect of whole of the amount of profits

and gains of business which are attributable to any one or more of the activities enumerated therein for carrying on the business of banking or providing credit facilities to its members. The expression "attributable to" has to be understood in a broad sense and an amount which has been received in relation to or in connection with a banking activity of the assessee-Cooperative Bank shall be considered to be attributable to the banking activity. As per the narration of the facts, it is undisputed that the activity of the assessee is carrying on the business of banking and in order to claim the benefit of provisions of Section 80P of the Act, it was essential for the assessee to establish that the deduction claimed was in respect of profits and gains of business attributable to the business of banking. The assessee had received an amount of Rs.3,16,502/- from Haryana State Cooperative Bank Ltd., Chandigarh which was credited to the reserve for "bad and doubtful debts" which was in the nature of an aid by the Apex Bank to the assessee-bank for meeting "bad and doubtful debts."

Section 80P (2)(a)(i) came up for interpretation before the Madras High Court in **Commissioner of Income Tax v. Madurai District Central Cooperative Bank Ltd., 148 ITR 196** wherein the assessee, a cooperative society had received subsidy from the Government as an inducement for opening new branches and also for granting loans at lower rates of interest to poorer people. It was held that the same was allowable deduction under the aforesaid provision. The Madras High Court in Madurai District Central Cooperative Bank Ltd.'s case (supra) after following the judgments of Allahabad High Court in **H.R. Sugar Factory (P) Ltd. v. CIT [1970] 77 ITR 614 (All)**

and Bombay High Court in **Dhrangadhra Chemical Works Ltd. v. CIT [1977] 106 ITR 473 (Bom)**, held as under:-

> "The above provision enables co-operative societies carrying on banking business to get deduction in respect of the whole of the amount of profits and gains of business attributable to any one or more of the activities, that is, carrying on the business of banking or providing credit facilities to its members. There is no dispute in the present case that the assessee is a co-operative bank carrying on the business of banking. Therefore, for claiming exemption the assessee has to establish that the deduction claimed was in respect of profits and gains of its business attributable to the business of banking. Under s. 24 of the Banking Regulation Act, 1949, every banking company has to maintain in cash, gold or unencumbered approved securities valued at a price not exceeding the current market price, an amount which shall not be less than 20% of the total of its time and demand liabilities. In pursuance of the said s. 24 of the Banking Regulation Act, the Reserve Bank of India has issued directions to banking institutions to keep the prescribed amount in liquid assets like securities. It is because of the above statutory provision and the directions given by the Reserve Bank of India, the assessee which is carrying on the business of banking has necessarily to keep certain liquid assets like

securities, as a condition precedent for carrying on the banking business. In that view, the liquid assets like securities which the banks are to maintain cannot be taken as investments. Therefore, the interest from such securities should normally be taken as income from banking business and it cannot be taken as income from other sources. Even assuming that the interest from such securities cannot be taken as income from banking business, still it will come within the scope of s. 80P for the reason that the provisions in s. 80P(2)(a)(i) refer to profits and gains attributable to the banking business of the assessee. The interest received from securities in the present case is clearly attributable to the banking business carried on by the assessee. The expression "attributable to" occurring in s. 80P (2)(a)(i) has to be understood in a broad sense and it cannot be equated to the expression "derived from".

In view of the above, the question of law referred to this Court as reproduced above is answered in the affirmative, i.e., in favour of the assessee and against the revenue. There shall, however, be no order as to costs.

(AJAY KUMAR MITTAL
JUDGE

September 24th, 2007 **(M.M. KUMAR)**
gbs **JUDGE**